

APPEAL NO. 023022
FILED JANUARY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 22, 2002. The hearing officer determined that the respondent's (claimant) _____, compensable injury extends to include a concussion, cervical disc herniation, and cervical radiculopathy, but does not extend to include an ulnar nerve injury. The hearing officer further determined that the claimant had disability from September 15, 2001, through the date of the CCH. The appellant (carrier) appealed, asserting that the hearing officer committed evidentiary error and also on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Reversed and remanded.

Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. See Texas Workers' Compensation Commission Appeal No. 93809, decided October 25, 1993. Upon review of the record in this case, it is clear that the claimant called Dr. D to testify telephonically as an expert witness, and that the hearing officer allowed him to testify despite the carrier's objection. The hearing officer went off the record at 10:27 a.m. to make telephone contact with Dr. D. The tape recording of the proceeding again picks up at 10:58 a.m. with the hearing officer instructing the carrier to commence its case in chief. During the 31-minute gap in the tape, the carrier presumably made its objection and Dr. D testified. Because we have no record of the carrier's objection or Dr. D's testimony, we do not have a complete record upon which to render a decision in this matter. Accordingly, we remand this case for reconstruction of the record. See Texas Workers' Compensation Commission Appeal No. 960968, decided July 3, 1996.

On remand, the hearing officer shall reconstruct the record as it relates to the 31-minute gap in the tape recording of the proceeding. This includes a summary of the carrier's objection and the testimony of Dr. D. After reconstruction of the record, the hearing officer shall give all parties an opportunity to review and respond to the reconstruction. If the hearing officer is unable to reconstruct the record, additional proceedings shall be held for the limited purposes of allowing the carrier to place its objection on the record and obtaining Dr. D's testimony. The hearing officer may make further findings of fact and conclusions of law, as necessary, with regard to the appealed issues.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new

decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **ACE FIRE UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Daniel R. Barry
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge